municipality.[8] But this theory merely indicates a method by which the municipality as principal may reimburse its agent if it is directly liable for his torts. And inasmuch as these cases of reimbursement arise only when the municipality is not directly liable, the appropriations can be supported only by regarding the municipality as capable of discharging certain moral obligations.[9] On principle, it is submitted that such a power is not within the strict construction of municipal charters universally demanded by the courts.[10]

The further question, whether or not these reimbursements serve a public purpose by making officers more efficient in the performance of their duties, is usually overlooked by the courts. It may be argued that personal liability for all unauthorized acts will result in such an excess of caution on the part of public officials as to interfere with the proper performance of their duties. On the other hand, reimbursement may cause wasteful carelessness. But ordinarily the courts refuse to declare appropriations public when the immediate purpose is the promotion of individual interest, even though the public welfare is ultimately furthered.[11] Accordingly, reimbursement would seem to be in its nature a gratuity and within the limitation.[12] On this ground the courts have declared invalid a statute authorizing municipal officers to obtain reimbursement for successfully defending suits brought to remove them from office.[13] Such cases may be distinguished in that suits to remove from office are brought for criminal misconduct in office and are in their nature penal. But the underlying principle is the same whether the reimbursement is for a civil or criminal prosecution. However, since courts hesitate to interfere with municipal appropriations and will go far to find a public purpose, and in view of the authorities supporting appropriations for reimbursement, though the validity of the purpose was not questioned, it is unlikely that in future such appropriations, at least in civil cases, will be declared invalid.

RECENT CASES.

BILLS AND NOTES — CHECKS — ACCEPTANCE BY RETENTION OF CHECK BY DRAWEE. — The Negotiable Instruments Law of Pennsylvania provides that where a drawee to whom a bill is delivered for acceptance destroys it or refuses to return it within twenty-four hours or such other period as the holder may allow, he will be deemed to have accepted it. The plaintiff presented certain checks to the defendant bank, which retained possession of them for several days. There was no express demand by the plaintiff, nor refusal by the bank. *Held*, that the defendant is liable as acceptor. *Wisner* v. *First Nat'l Bank*, 68 Atl. 955 (Pa.).

A drawee ordinarily has twenty-four hours in which to examine the state of his accounts before he need act in any way. See *Bellasis* v. *Hester*, 1 Ld. Raym. 280, 281. The mere retention beyond that time of a check or bill of exchange offered for acceptance was not, under the law merchant, enough to constitute a

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[8] Babbitt *v.* Selectmen of Savoy, 3 Cush. (Mass.) 530.
[9] Trustees of Exempt Firemen's Fund *v.* Roome, 93 N. Y. 313.
[10] Stetson *v.* Kempton, 13 Mass. 271.
[11] Lowell *v.* Boston, 111 Mass. 454.
[12] Mount *v.* State, 90 Ind. 29.
[13] Matter of Chapman *v.* City of New York, 168 N. Y. 80. *Contra*, Laurence *v.* McAlvin, 109 Mass. 311; Hixon *v.* Sharon, 190 Mass. 347.

constructive acceptance. *Overman* v. *Hoboken City Bank*, 31 N. J. L. 563. And several cases have reached the same result under the Negotiable Instruments Law. *Dickinson* v. *Marsh*, 57 Mo. App. 566. What acts beyond mere retention were necessary under the law merchant to constitute an acceptance was unsettled. The statute should be regarded as defining the kind of act required, and is usually interpreted as contemplating a tortious act in the nature of a conversion. *Matteson* v. *Moulton*, 11 Hun 268, aff'd 79 N. Y. 627. In the present case, however, the court maintains that presentation is itself a demand for acceptance or return, and that failure to comply with that demand constitutes an acceptance within the statute. But since a check need only be presented for payment and need not be presented for acceptance, its presentation is probably not a demand for acceptance. See *Westberg* v. *Chicago, etc., Co.*, 117 Wis. 589, 594.

BROKERS — STOCKS CARRIED ON MARGIN — NATURE OF TRANSACTION. — A broker carried stock on margin for the defendants, and, as was permissible under the agreement, pledged it for an amount greater than the defendants owed him. Within four months before his bankruptcy, he transferred assets to the pledgee, so that the defendants were able to redeem the stock on payment of their indebtedness. The broker's trustee in bankruptcy sued for the amount transferred, on the ground that the defendants had obtained a preference. *Held*, that the defendants are not liable, as they are pledgors of the stock and are not creditors within the meaning of the Bankruptcy Act of 1898, § 1 (9). *Richardson* v. *Shaw*, U. S. Sup. Ct., April 6, 1908.

For a discussion of the principles involved, see 19 HARV. L. REV. 529. *Cf.* also 15 *ibid.* 78.

CARRIERS — INJURY TO GOODS — INJURY CAUSED BY NON-NEGLIGENT ACT OF SHIPPER. — The plaintiff shipped a convict car on the defendant's railroad. A fire in a stove in the car, unknown to both parties, was burning at the time of the shipment. From this the car caught fire and was destroyed. Neither the plaintiff nor the defendant was guilty of any negligence. *Held*, that the plaintiff cannot recover. *Coweta County* v. *Central of Georgia Ry. Co.*, 60 S. E. 1018 (Ga.).

The rule was early laid down that a common carrier is liable for the loss of goods entrusted to it unless caused by an act of God or of the public enemy. *Coggs* v. *Bernard*, 2 Ld. Raym. 909. To these two exceptions may be added losses due to public authority, the inherent nature of the goods, and the act of the shipper. 4 ELLIOTT, RAILROADS, § 1454. Interference by the shipper with the carrier in the method of performing its duty, relieves the carrier of its absolute liability. *Loveland* v. *Burke*, 120 Mass. 139. And the carrier is similarly relieved by a negligent or wrongful act of the shipper. *Rixford* v. *Smith*, 52 N. H. 355. But no case has been found in which the carrier is relieved because of the shipper's non-negligent act. The principal case may be supported, however, on the ground that the fire in the car amounted to an inherent defect. *Cf. Hudson* v. *Baxendale*, 2 H. & N. 575 The opposite result would probably have been reached if a fire started by the shipper in any other place had, without negligence on his part, spread to the railroad and consumed the goods.

CONSTITUTIONAL LAW — NATURE AND DEVELOPMENT OF CONSTITUTIONAL GOVERNMENT — STATE QUASI-SOVEREIGNTY. — A New Jersey statute provided that it should be unlawful to transport or carry through pipes or conduits the waters of any fresh-water stream or lake of New Jersey into any other state for use therein. The defendant corporation carried water of the Passaic River through pipes to New York. *Held*, that the statute is constitutional and that an injunction should be granted. *Hudson County Water Co.* v. *McCarter*, U. S. Sup. Ct., April 6, 1908.

The case is noteworthy because the decision is based not on the state's ownership of the riverbed nor on the actual injury suffered by this diversion, but on the ground that the state as quasi-sovereign, *parens patriae*, can protect